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VOLUME IV

MONTANA OPERATIONS MANUAL
STATEWIDE POLICIES AND PROCEDURES - GOVERNOR'S OFFICE

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Revised April 19, 1982

State of Montana
Office of the Governor
Helena, Montana 59620

TED SCHWINDEN
GOVERNOR

March 1, 1983

Management Memo 4-83-1

TO: All State Agencies

FROM: Governor Ted Schwinden

RE: RECOMMENDED PRIVATE CONSULTANT SELECTION PROCEDURES

INTRODUCTION

Contracting with individuals or organizations for various professional services is a recognized alternative for accomplishing some functions of State government. Department Directors or the person or persons charged by law with the ultimate responsibility for administering each State agency have the full authority and responsibility for determining the need for and securing the outside contractual help. These guidelines are intended to provide direction for the procedures to be carried out when selecting individuals or firms to provide private professional consultant services within the authority of each agency. For the purposes of these guidelines, the following definitions shall apply:

Professional Consultant Services - Services provided to a State agency by a private consultant under an independent contract.

Private Professional Consultant - Professional individual or firm providing professional consultant services to a State agency and compensated with assets of Montana State government.

In selecting a private professional consultant, it is expected that the State agency will base its choice on demonstrated competence, knowledge and qualifications and that contractual agreement will be dependent upon successful negotiation of a reasonable fee for the services. Further, if all other considerations are comparable, it is expected that preference will be given to a private consultant who is a bona fide resident of Montana and whose principal place of business is within the State.

BASIC SELECTION PROCEDURES

The following basic selection procedures shall be used as guidelines in an agency's selection of a private professional consultant:

1. Notification - Notice of a proposed contract should be given to all known qualified consultants who have indicated interest in performing the type of work to be contracted if the amount of the proposed contract will exceed $5,000. Notice should include, at minimum, preliminary project description, the procedures and selection criteria which the agency will use to select the finalists for the contract for services, a preliminary cost estimate, closing date for indication of interest and agency contact.

2. Initial Screening - When response to project notification is in excess of three qualified consultant firms or individuals, designated agency personnel shall apply predetermined preselection criteria to the qualifications, demonstrated competence, knowledge, specific expertise relative to the project and the previous work for the State of the applicants and shall determine no less than two consultant firms or individuals for further consideration. Applicants who are no longer under consideration should be notified by the agency.

3. Selection - Selection of the consultant individual or firm with whom contract negotiation will begin shall be determined on the basis of evaluation and rating of not less than two, nor more than three, qualified finalists. Predetermined criteria for selection shall include consideration of the applicants' capacity to perform the work in the time required, the expertise to be applied to the project tasks, estimated total number of hours, approach to performing project activities and other criteria considered by the agency to be pertinent to selection for the specific project. Proposed cost estimates associated with estimated hours will not be binding and shall not restrict the negotation of the consultatnt fee with the top-ranked consultant firm or individual selected.

4. Negotiation - Negotiation of consultant fee for the defined scope of services shall begin with the top-ranked consultant firm or individual selected. If agreement to a fee considered by the agency to be reasonable cannot be reached with the top-ranked firm or individual, negotiation shall terminate and be begun with the next-ranked consultant firm or individual. Negotiation shall end when a reasonable fee has been agreed to by the agency and the selected consultant firm or individual in order of ranking.

Professional personal service contract requirements are addressed in Management Memo 4-81-4 and will apply to contractual considerations.

WAIVER OF SELECTION PROCEDURES

An agency may waive all or some of the basic selection procedures only for predetermined reasons. Allowable waiver conditions are:

1. A bona fide emergency situation exists.
2. A documented sole source or proprietary product or process is required.

3. Conflicts with regulatory time frames or statutory deadlines do not allow compliance with the selection procedures.

Waiver criteria must be clearly specified and documented prior to selection activities.

ADMINISTRATIVE CONSIDERATIONS

Each agency contracting professional consultant services shall specify its operant selection procedures in writing, including specification of waiver conditions applicable to the work of the agency that is contracted.

MANAGEMENT MEMO 1:B/3

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING

TED SCHWINDEN, GOVERNOR

CAPITOL BUILDING

STATE OF MONTANA

(406) 449-3616

HELENA, MONTANA 59620

May 5, 1981

To: Executive Branch Agencies

From: David M. Lewis David M Lewis

Re: Montana Operations Manual Volume IV

Enclosed are two new management memos to be included in the Montana Operations Manual Volume IV.

4-81-1 Federal Grants
4-81-2 Data Processing Policies

The following management memo should be removed from the Montana Operations Manual Volume IV:

4-80-9 Data Processing Procurement

Enclosures

AN EQUAL OPPORTUNITY EMPLOYER

State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

April 28, 1981

Management Memo 4-81-1

TO: Executive Branch Agencies

FROM: Governor Ted Schwinden

RE: Federal Grants

INTRODUCTION

This administration is concerned with the potential adverse effects that federal grants can have on state government. There is the potential for federal grant reductions or discontinuations to leave the state with the necessity of assuming funding or abandoning the goals of programs initially established with federal funds. There is an increasing number of regulations and mandates imposed by grant conditions that increase the costs and administrative burden on the state. There is a tendency of federal executives to only work with their state counterparts in developing policies and regulations.

POLICY

This administration intends that the gubernatorial role in the federal grants process be enhanced to assure that state policies and priorities are considered. Therefore, all requests for federal grants must be approved and signed by the appropriate department head prior to submittal to the State Clearinghouse. Requests not signed by the appropriate department head will be returned unapproved.

State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

April 28, 1981

Management Memo 4-81-2

TO: Executive Branch Agencies

FROM: Governor Ted Schwinden

RE: Data Processing Policies

INTRODUCTION

Section 18-4-111, MCA has placed the responsibility for controlling the development of data processing in the state of Montana within the Office of Budget and Program Planning.

Section 18-4-111:

Responsibilities of budget director for data processing. The budget director shall:

(1) establish guidelines for the operation and development of data processing services by or for state government;

(2) set priorities for the development and acquisition of data processing systems;

(3) approve the procurement of data processing equipment before such equipment is acquired for state government by the department of administration;

(4) approve the addition of data processing staff; and

(5) review and approve all contracts for private sector data processing services.

DEFINITION

The term "data processing" is a generic term and refers to the collection of personnel, equipment, and computer programs necessary to perform a function related to electronic information processing services.

POLICY

The Budget Director shall establish, publish, and distribute documents containing appropriate policies, standards and guidelines related to data processing in state government. These documents may be obtained by contacting the Office of Budget and Program Planning.

TED SCHWINDEN
GOVERNOR

State of Montana
Office of the Governor
Helena 59620

July 15, 1981

Management Memo 4-81-3

TO: Executive Branch Agencies

FROM: Governor Ted Schwinden

RE: LEGAL SERVICES REVIEW COMMITTEE

INTRODUCTION

With Executive Order Number 3-81, I have continued the Legal Services Review Committee. This Committee was initially established by Governor Thomas L. Judge to review and approve or disapprove requests from Executive Branch agencies which are directly accountable to the Governor to contract with private legal counsel ("private legal counsel" means a lawyer engaged in the private practice of law, or legal services purchased from any lawyer which are paid for as fee for services and not as salary to an employee). Executive Branch agencies include departments, boards, commissions, councils, and similar bodies. This Management Memo provides 1) procedures to be followed by affected agencies to request approval from the Legal Services Review Committee to use private legal counsel and 2) procedures to be followed by the Legal Services Review Committee in reviewing agency requests.

This management memo supersedes Management Memo 4-80-6 issued August 1, 1980.

AGENCY REQUEST PROCEDURES

State Executive Branch agencies may, within the limits of authorized appropriations, contract with private legal counsel to meet legal services requirements if, and only if, granted prior approval from the Legal Services Review Committee. To obtain the necessary approval, agency heads must make written request to the Chairman of the Committee for Committee approval. The request must contain the following and will be addressed to the Chairman, Legal Services Review Committee, in care of the Office of Budget and Program Planning:

1. A statement that existing legal counsel is being used efficiently and to the limits of its capacity and/or ability, with sufficient detail about use of staff counsel to support the need for private counsel. Sufficient detail may include total number of legal counsel and total agency legal workload (active litigation, administrative hearings, rule-making activities, etc.) or any other general or major items which the agency feels will accurately represent its legal workload. A detailed description of each staff member's workload and activities is not required.

   To facilitate preparation of the request, agencies may reference a previous request if that request provides the necessary information.

2. A statement that at least one of the following conditions exists, along with any arguments or details about the condition necessary to show the Committee that the condition in fact gives rise to a need for private legal counsel:

   A. The agency's legal staff lacks time or essential expertise to handle the matter.

   B. A substantial conflict of interest exists affecting all of the agency's legal staff or all but a number insufficient to handle the matter.

   C. A temporary need for extensive legal work exists in a geographic area remote from the agency's home office.

   D. An unusual and/or temporary increase exists in the agency's legal services workload.

   E. Any other circumstances which the agency believes necessitates the use of private legal counsel.

3. A detailed explanation of how private counsel will be used and the estimated cost of the services to be provided by private counsel. Inclusion of an independent contractor in the Public Employees' Retirement System should be carefully scrutinized. Inclusion should be only for an exceptional reason or as part of the consideration paid for the contracted services.

4. Proposed contract the agency will use if the request is approved. The contract should follow the requirements set out in Management Memo 4-81-4. If those requirements are not followed, reasons should be given.

5. If the request is for a general retainer rather than a fee for service contract, a detailed explanation of the extraordinary circumstances which justify the retainer.

6. If the agency is under a specific time deadline, a statement indicating such to the Chairman and requesting prompt action.

It is emphasized that agencies contemplating use of private legal counsel must adhere to the following:

1. Any agency employee who enters into a contract for private legal counsel without obtaining prior written approval from the committee is subject to disciplinary action.

2. Any agency which uses private legal counsel must do the following:

   A. Carefully monitor each contract resulting from approval of the request and terminate contracts which are no longer required.

   B. Strictly account for all costs associated with the use of private legal counsel. (Expenditure identification code 2157 - Contracted Services, Private Legal Counsel has been established in the Statewide Budgeting and Accounting System to account for expenditures for private legal counsel. All expenditures for private legal counsel, to include fees for services, travel, per diem, overhead, and other associated costs, must be coded to this expenditure identification code).

   C. Maintain a public record of the terms of employment, the total amount of compensation, and a full and itemized statement showing hours worked and expenses incurred for all private legal counsel employed by the agency.

COMMITTEE PROCEDURES

The Legal Services Review Committee has sole and final authority over the use of private legal counsel by Executive Branch agencies which, under the Constitution and laws of Montana, are directly accountable to the Governor. No appeal provisions are provided. To review agency requests to use private legal counsel, the Committee will adhere to the following procedures:

1. Requests to use private legal counsel will be forwarded to the Chairman of the Committee by the requesting agency. Upon receipt, the Chairman will review each request to insure that it is complete. Incomplete items will be returned for completion.

2. The Chairman will provide copies of each complete request to other Committee members for discussion at a subsequent meeting.

3. If the agency indicates a need for quick action, the Committee will schedule its work to accommodate that need.

4. The Committee will process each request as follows:

   A. Set a meeting time and inform applicable agencies that agency personnel may, if they desire, attend. The Committee may require agency personnel to attend to explain their requests.

   B. Make an independent determination of whether the matter must be handled by a lawyer.

   C. If the matter must or should be handled by a lawyer, determine whether or not the agency's existing legal staff can handle it, considering factors such as staff expertise and workload.

D. Determine whether the agency has shown a need to use private legal counsel.

E. Review the terms of the proposed contract, specifically including: duties, hourly rates, method for billing, duration of the contract, and remedies for the state. (Such contracts must comply with Management Memo 4-81-4, unless the agency shows that Management Memo 4-81-4 does not apply.)

F. The Committee will confine its review to the matter of agency need for private counsel and will not review the choice of counsel the agency wishes to hire, unless special circumstances require.

G. Based on the above, approve or disapprove the request.

5. The Chairman will notify the requesting agency, in writing, of the Committee's approval or disapproval of a request. If a request is disapproved, the notification will state reasons for disapproval.

6. An agency, upon receiving approval of a request, must use the exact contract approved by the Committee. Any change in fees, amount of services provided, substantial change in type of services to be provided, or any other substantial change in the contract terms must be approved by the Committee prior to entering into the contract or prior to amendment of the original. Committee review of minor changes may be waived in writing by the Chairman.

7. The Committee will maintain files of approved and disapproved requests to use private legal counsel, and will notify agencies of upcoming renewal requirements.

MONITORING PROCEDURES

Agencies are responsible for monitoring all contracts resulting from the approval of a request to use private legal counsel and for promptly terminating contracts no longer absolutely necessary. When such a contract is terminated, the Chairman of the Legal Services Review Committee must be notified so that accurate files can be maintained by the Committee.

Also, agencies are responsible for strictly accounting for all fees, expenses, and other costs associated with the use of special legal counsel, and maintaining public records of the terms of employment, the total amount of compensation, and a full and itemized statement showing hours worked and expenses incurred for all private legal counsel employed.

The Committee reserves the right to obtain and/or access whatever records and information it deems necessary to insure that proper records are being maintained.

CLOSING

Questions concerning the above are to be directed to the Chairman, Legal Services Review Committee, in care of the Office of Budget and Program Planning.

State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

July 15, 1981

Management Memo 4-81-4

TO: Executive Branch Agencies

FROM: Governor Ted Schwinden

RE: PROFESSIONAL PERSONAL SERVICES CONTRACTS

INTRODUCTION

Contracting with individuals or organizations for various professional services is a recognized alternative for accomplishing various requirements of state government. This management memo, in recognition of the importance and sensitivity of professional personal services contracts, provides direction for the preparation and control of such contracts. Although this memo specifically addresses professional personal services contracts, good contract management demands that similar guidelines be followed when administering any contract.

It is emphasized that this management memo has as its purpose only to provide minimum requirements concerning the content and filing of professional personal services contracts. Department directors or the person or persons charged by law with the ultimate responsibility for administering each state agency have full authority and responsibility for determining the need for and securing outside contractual help. In addition, before entering into professional personal services contracts, the agency should consider Section 2-2-201, MCA, and Chapter Number 547, Montana Session Laws, 1981 (House Bill 26).

For the purpose of this management memo, the following definitions shall apply:

Professional Personal Services Contract - An agreement between the state of Montana and a contractor (either individual or organization) for the rendering of professional personal services. The agreement must provide for payment to the contractor with assets of Montana state government.

Professional Personal Services - Medical, religious, legal, lecturing, auditing, investigating, consulting, and similar services, the contracts for which are not subject to the established competitive bidding process due to the particular professional or technical expertise required. It is not necessary to submit a requisition to the Purchasing Division to contract for such services. If there is a question concerning whether or not the Purchasing Division must get involved, contact the Purchasing Division.

This management memo supersedes Management Memo 4-80-4 issued August 1, 1980.

MINIMUM REQUIREMENTS

The following items should be included in the contracts for professional personal services:

1. Parties State the full name and address of each party.

2. Purpose In plain words, explain what this contract is intended to accomplish. For example: "The purpose of this contract is to provide (the agency) with the services (contractor) as a hearings officer."

3. Duties Provide a clear description of the work the contracted party will perform. Describe the final work product, if any.

4. Compensation State the maximum amount the state will pay for the contracted party's services, and the means by which the payment will be determined. Where possible, identify milestones in completion of the contract and associate payment dates with these milestones. Explain the means by which a contracted party requests payment when it is due. If the maximum amount does not include expenses such as travel and lodging, the contract should expressly indicate this.

5. Time of Performance State when performance will begin and when it must be completed.

6. Liaison Identify by name and title the individual to whom the contracted party is to report.

7. Agency Assistance Identify the assistance, if any, which the state government will be providing to the contracted party (personnel, equipment, etc.). If none, so indicate.

8. Ownership and Publication of Materials Identify which party owns the working papers and end products of the agreement, and which party is authorized to release information concerning the work in progress.

9. Determination of Contracted Party's Employment Status The agency must determine and specify in the contract to which of the following

employment categories the individual or organization that is to perform the service belongs:

These categories are explained as follows:

A. Independent Contractor - An independent contractor is one who renders service in the course of an occupation and:

1. has been and will continue to be free from control or direction over the performance of the services, both under this contract and in fact; and

2. is engaged to an independently established trade, occupation, profession, or business.

The consideration of who has control over how the job is done is the most important and most difficult factor. To determine this, the following questions should be considered:

1. Does the individual or organization retain or exercise the right to control the duties of the job?

2. Is payment for the job to be made on a completed contract basis rather than a regular wage basis?

3. Does the individual or organization furnish its own major equipment for the job rather than having it furnished for him?

4. Is the agency prevented from firing the individual or organization at any time without liability?

If any of the above questions can be answered in the negative, it may prevent the establishment of an independent contractor relationship. The consideration to be given these questions is not a balancing process; rather an independent contractorship is established usually only by a convincing accumulation of these and other tests. A mere indication in the contract that the individual is an independent contractor is not sufficient to establish him as such.

The other category of employment status is that of an employee. An employee generally performs a particular kind of work for wages. An employee may fit under some or most of the independent contractor features listed above but lacks at least one of them so as to give him less than full control or independence over how he performs the assigned task. Employees should be placed on the payroll, not engaged on a contracted services basis.

10. Access to Records Require the contracted party to maintain reasonable records of his performance and allow access to these records by the agency and, where required by law, the Legislative Auditor and the Legislative Fiscal Analyst.

11. Termination and Default Indicate how the contract may be terminated. Where possible, specify the state's remedy in the event that performance is not completed.

12. Venue Reflect that, in the event of litigation concerning the contract, venue shall be the First Judicial District in and for the County of Lewis and Clark, Montana, and the contract shall be interpreted according to the laws of Montana.

13. Assignment, Transfer, and Subcontracting Indicate that no assignment, transfer, or subcontracting of the agreement can be made unless all parties agree in writing.

14. Modification and Previous Agreements Indicate that the contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written agreement, shall be valid or binding. Also provide that the agreement shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the agreement.

15. Date Indicate the date on which the contract is made.

APPROVAL OF LEGAL CONTENT

In order to assure that the above minimum requirements have been addressed, and that the contract is otherwise satisfactorily drafted, each contract shall be approved by a lawyer for the agency, and such approval shall be indicated on each contract. It is suggested that this approval be indicated on the bottom of the last page of the contract by the words "Approved for Legal Content by _____" followed by the approving attorney's signature.

To facilitate contract administration, when an agency will be issuing several similar contracts differing only in parties, compensation, time of performance, or other minor elements, the agency may use a form contract approved by one of its lawyers. It shall remain the responsibility of the department head to assure that all contracts are well drafted and expressed in clear, legally adequate language.

ADMINISTRATIVE CONSIDERATIONS

Based on past experience, it can be assumed that the Executive Branch will periodically be questioned concerning professional personal services contracts. To facilitate research and information collection, agencies are directed to maintain central files for professional services contracts.

CLOSING

The purpose of this management memo is to provide minimum provisions to be included in contracts for professional personal services, and to facilitate related information collection by establishing filing requirements. The requirements indicated above must be viewed as minimums. It is expected that most

contracts will include additional provisions that are particular to each individual contract.

Questions concerning this memo are to be directed to the assigned budget analyst in the Office of Budget and Program Planning.

State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

July 15, 1981

Management Memo 4-81-5

TO: Executive Branch Agencies

FROM: Governor Ted Schwinden

RE: ORGANIZATION CHARTS

INTRODUCTION

It is the duty of each department head to establish the internal organizational structure of the department pursuant to 2-15-112(g), MCA. The internal organizational structure must comply substantially with 2-15-104, MCA. An internal organizational structure so established is subject to an approval of the Governor.

A division, bureau, or section of a department is not legally created unless it appears on an organizational chart approved by the Governor. If a department does not now have or needs to modify a current chart approved by the Governor, it should expedite the adoption of a new chart by the following procedures.

This management memo supersedes Management Memo 4-80-1 issued August 1, 1980.

ORGANIZATION CHART APPROVAL PROCEDURE

1. Department head drafts revised organization chart following the Model Rules for Agency Organization contained in Title 1, Chapter 6, Administrative Rules of Montana (ARM).

2. The department head or his representative meets with staff of the Office of Budget and Program Planning to explain changes. A copy of the old chart with the changes penciled in will usually be sufficient preparation for this meeting.

3. Upon approval of the changes by the Office of Budget and Program Planning, the department draws up the revised chart in the form it is to

be printed in the ARM. A signature block for approval by the department head and the Governor must be included.

4. Four copies of the revised chart, each signed by the department head, are delivered to the Office of Budget and Program Planning.

5. Upon final approval by the Office of Budget and Program Planning, the charts are delivered to the Governor with the Office of Budget and Program Planning's recommendations.

6. The signed charts are returned to the Office of Budget and Program Planning.

7. One copy is filed with the Secretary of State as an official act of the Governor, two copies are returned to the department head, and one is retained by the Office of Budget and Program Planning.

8. The department head retains one copy and files the second copy with the Secretary of State for publication in the ARM.

State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

July 15, 1981

Management Memo 4-81-6

TO: Executive Branch Agencies

FROM: Governor Ted Schwinden

RE: ADMINISTRATION OF STATE EMPLOYEES' TRAVEL

INTRODUCTION

Travel, both in-state and out-of-state, is recognized as being essential to the operation of Montana state government. In light of the current economic and energy situation and in the best interest of Montana's citizens, however, it is necessary that travel expenditures and the related consumption of energy resources necessary to support Montana state government operations be limited to the absolute minimum. The purpose of this management memo is to provide policy guidance to assist state department/agency heads with the administration of travel and to emphasize this administration's desire to provide efficient state government.

This management memo supersedes Management Memo 4-80-3 issued August 1, 1980.

POLICY STATEMENTS

Statement Number 1 All travel will be approved in advance by the applicable department/agency head or his designated representative. Although the procedures and processes used to approve travel requests are left to the discretion of each department/agency head, as a minimum, the following must be considered:

1. Purpose of travel
2. Benefits to be derived by the state from the requested travel
3. Impact of foregoing the requested travel

4. Cost of the requested travel (personal services, transportation, meals, lodging, registration, etc.)

5. Alternatives to travel (telephone, telegram, etc.)

6. Funding available

Statement Number 2 The number of personnel attending a given function requiring travel will be held to the absolute minimum.

Statement Number 3 although each Montana state department or agency is encouraged to assist and suport other states and organizations in their efforts at problem solving, Montana cannot do so at its own expense; therefore, only travel which will derive benefits to the State of Montana will be allowed. If another state or organization is willing to pay travel costs for a state employee to lecture or provide other assistance the applicable state department/agency head may, at his discretion, contribute the employee's personal services cost to the project.

Statement Number 4 The State of Montana will not pay an employee's travel cost to attend a function the benefits of which primarily accrue to the employee with only indirect benefits to the state. To promote employee initiative and efforts at self-improvement, a department/agency head may, at his discretion, provide an employee time-off with pay to participate in the desired function (provided the time off with pay conforms to rules implemented concerning the statewide classification and pay plan).

Statement Number 5 . Employees using automobiles while in an approved travel status will adhere to speed limits approved for the state of Montana and will make every effort to maximize the benefits to the state of the travel and conserve energy.

DEPARTMENT/AGENCY HEAD RESPONSIBILITY

Each department/agency head is responsible for insuring that the above policy statements are understood and adhered to by all applicable employees.

CLOSING

Questions concerning this management memo are to be directed to applicable budget analysts in the Office of Budget and Program Planning.

TED SCHWINDEN
GOVERNOR

State of Montana
Office of the Governor
Helena 59620

July 15, 1981

Management Memo 4-81-7

TO: Executive Branch Agencies

FROM: Governor Ted Schwinden

RE: COST ALLOCATION PLANS/INDIRECT COSTS

INTRODUCTION

The federal government in Federal Management Circular (FMC) 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments (formerly OBM Circular A-87) recognizes and provides for reimbursements to state and local governments for indirect costs incurred in the administration of federal grants and contracts. Montana statutes, in recognition of federal intent and guidelines, provide as follows:

> 17-3-110 Statewide cost allocation plan. The Budget Director shall annually prepare a statewide cost allocation plan distributing service agency indirect costs among the grantee agencies, in accordance with principles and procedures established by federal regulations and guidelines.
>
> 17-3-111 Indirect cost rates. Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

This management memo provides general information concerning FMC 74-4, emphasizes agency responsibility under 17-3-111, MCA, and provides procedures for budgeting and accounting for indirect cost reimbursements.

This management memo supersedes Management Memo 4-80-7 issued August 1, 1980.

FEDERAL MANAGEMENT CIRCULAR 74-4

FMC 74-4 is one of several circulars issued by the Office of Management and Budget designed to bring about more efficient administration of federal grants and contracts. It provides the foundation for greater uniformity in the costing procedures of states and localities and in the reimbursement practices of federal departments and agencies, and establishes a system whereby a single federal department, called the cognizant agency, acts for all federal departments in approving certain state and local costs associated with the performance of federally supported programs and projects. One of the most significant aspects of FMC 74-4 is that it recognizes central support and indirect costs as costs of grants and contracts and prescribes procedures for states and localities to claim, and the federal government to review and approve, such costs.

FMC 74-4 provides that costs incurred by the state in connection with programs sponsored by the federal government are eligible charges against federal grants and contracts whether incurred by the agency or unit which receives or performs the federal award or another organization of the state which provides supportive services to the agency or unit. Cost allocation plans are the means by which such costs are identified for reimbursement under federal grants and contracts.

Two types of cost allocation plans are recognized in FMC 74-4. The first type of plan identifies and distributes the costs of services provided by support organizations to agencies or units performing federal grants and contracts. This plan is referred to as a statewide cost allocation plan. The second plan, commonly referred to as an indirect cost proposal, distributes the administrative or joint costs incurred within a grantee or contractor agency or unit and the costs of services allocated to it under the statewide cost allocation plan to all work performed by that agency or unit. The plans must be prepared annually and submitted to the cognizant federal agency for approval. The approval of cost allocation plans submitted by states is formalized by a negotiation agreement signed by an authorized representative of the cognizant federal agency. Signed agreements are reproduced and distributed to requesting federal offices and constitute authority to federal awarding agencies to accept claims for central service costs and indirect costs. Federal departments and agencies will not honor claims for central service or indirect costs unless proposals are prepared and, where necessary, approved by the cognizant federal agency.

STATEWIDE COST ALLOCATION PLAN

State agencies commonly render various support services to each other such as facilities, motor pool, personnel administration, data processing, etc. In some instances, these services are provided without charge to the recipient agency; in other instances, an interagency charge or billing is made. Under FMC 74-4, the costs of supporting agency services, regardless of how funded, or whether billed to departments or distributed through an allocation plan, are eligible charges to federal programs; however, a state that desires to charge support service costs to federal grants and contracts must first prepare a statewide cost allocation plan to allocate central services costs to the various agencies or units which they benefit.

17-3-110, MCA, recognizes the requirement for a statewide cost allocation plan and places responsibility for its preparation on the Budget Director. Department of Health, Education, and Welfare publication OASC-10 outlines requirements for the preparation of the statewide cost allocation plan.

INDIRECT COST PROPOSALS

The costs of state agencies/units performing federally supported programs consists of two basic categories -- direct and indirect. Direct costs are those which can be specifically or readily identified with a particular grant or contract. Indirect costs (or overhead) are those incurred for a common or joint purpose benefiting more than one cost objective. Indirect costs include both 1) the overhead costs originating in a state agency/unit performing a grant or contract and 2) the costs of central government services distributed through the statewide cost allocation plan and not otherwise treated as direct costs. Indirect costs should be charged to federal awards via an indirect cost rate, which is simply the percentage relationship of indirect costs to direct costs. The computation of the indirect cost rate supported by work-papers and other documentation is called an indirect cost proposal.

An indirect cost proposal must be prepared by each state agency/unit to claim indirect costs on federal grants or contracts. A separate proposal is required for each fiscal year for which costs are to be claimed. The proposal must be submitted to the applicable cognizant federal agency within six months after the close of each fiscal year. Department of Health, Education, and Welfare publication OASC-10 describes fully the requirements for the preparation of indirect cost proposals. Copies of the publication are available in the Office of Budget and Program Planning.

17-13-111, MCA, recognizes the necessity of preparing indirect cost proposals and places responsibility for negotiating indirect cost rates and recovering, to the fullest extent possible, indirect costs associated with federal grants and contracts on grantee agencies.

ACCOUNTING FOR INDIRECT COST REIMBURSEMENT

In order to determine the results of efforts to recover indirect costs and budget for indirect cost reimbursements, agencies of state government must identify and account for such reimbursements in a consistent manner. Beginning July 1, 1979, all state agencies will account for indirect cost reimbursements as indicated in the following paragraphs. Exceptions to the procedures will not be allowed unless written approval is obtained from the Office of Budget and Program Planning.

Upon receipt of a reimbursement for indirect costs associated with federal grants and contracts, the agency will determine the amount of the reimbursement due to the costs included in Part I of the Statewide Cost Allocation Plan and deposit that amount into the State General Fund using revenue objects associated with Revenue Class 1701 - Federal Indirect Cost Reimbursements. That portion of the reimbursement due to internal indirect costs will be deposited into the fund in which the costs were incurred (which may or may not be the State General Fund) using revenue objects associated with Revenue Class 1701 - Federal Indirect Cost Reimbursements.

It is emphasized that all allowable indirect cost recoveries are to be accounted for as prescribed above unless written approval authorizing an exception is obtained from the Office of Budget and Program Planning.

BUDGETING FOR INDIRECT COST REIMBURSEMENTS

The federal government in FMC 74-4 recognized that the performance of federal grants and contracts usually requires the expenditure of the grantees' or contractors' own resources and provides for reimbursement of certain of these costs. It is the responsibility of each state agency to recover to the fullest extent possible, indirect costs associated with federal grants and contracts and to use the indirect cost reimbursements to reduce the cost burden on its own and other state resources.

In order to budget for indirect cost reimbursement estimates of the total reimbursements to be received in the applicable budget period must be provided Good accounting practices and coordination with federal funding agencies should allow for the input of accurate revenue estimates for indirect cost reimbursements. Specific revenue estimates for indirect cost reimbursements are therefore required. Indirect cost reimbusements will be considered in the biennium budget process in order to more fully utilize state resources.

It is again emphasized that all allowable indirect cost recoveries must be accounted for and budgeted as indirect cost reimbursements. Indirect cost reimbursement allowances must not be used to provide grant projects with additional working capital unless written approval is obtained from the Office of Budget and Program Planning.

CLOSING

Grantee agencies must, in accordance with state and federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs. Questions concerning the preparation of indirect cost proposals should be directed to the applicable cognizant federal agency. Questions concerning accounting and budgeting for indirect cost reimbursements may be directed to the Office of Budget and Program Planning.

State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

July 15, 1981

Management Memo 4-81-8

TO: Executive Branch Agencies

FROM: Governor Ted Schwinden

RE: STATE MAPPING ADVISORY COMMITTEE

INTRODUCTION

To provide a means for regularly presenting the mapping needs of state and local agencies to the primary mapping agency of the federal government, the State Mapping Advisory Committee is continued. The Committee consists of representatives from the Bureau of Mines and Geology and the Departments of Natural Resources and Conservation, State Lands, Revenue, Highways, and Fish, Wildlife, and Parks. This committee will submit to the U. S. Geological Survey an annual report summarizing the topographic and other map needs of state and local agencies. It will be chaired by a representative from the Department of Administration. To assist state agencies with mapping needs, files of state indexes and status reports on topographic mapping will be maintained and copies will be made available.

This management memo supersedes Management Memo 4-80-2 issued August 1, 1980.

PROCEDURE

1. All state agencies which are users of U. S. Geological Survey maps will submit requests for new or replacement mapping and special map products to the Research and Information Systems Division, Department of Administration, by January 1 of each year. Requests for map products will include a justification of need and assigned departmental priorities, listed in order of their importance.

2. Each November, a meeting will be called by the division to discuss with state and local map users the nature of their mapping needs. A representative of the Rocky Mountain Division of the U. S. Geologocal Survey

will be invited to attend to explain new mapping programs and technology and discuss the requirements of federal agencies for maps and mapping in Montana.

3. The Research and Information Systems Division will consolidate into an annual report the various state and local agency requests. This report will be submitted to the Rocky Mountain Mapping Division, USGS, on February 1 each year.

State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

July 15, 1981

Management Memo 4-81-9

TO: Executive Branch Agencies

FROM: Governor Ted Schwinden

RE: 1980 CENSUS CENTER

INTRODUCTION

The state of Montana, in cooperation with the United States Bureau of the Census, has entered into an agreement to establish a State Census Center. This management memo describes the purpose of the State Census Center and establishes the Center within the Research and Information Systems Division of the Department of Administration.

This management memo supersedes Management Memo 4-80-5 issued August 1, 1980.

STATE CENSUS CENTER PROGRAM

The United States Bureau of the Census, in anticipation of a dramatic expansion in the use of census data following the 1980 Census of Population and Housing, has developed a State Census Center Program to increase analytical capabilities and user services in each state. The basic concept of the program involves state-related organizations operating data delivery and user services facilities based upon a standardized model in cooperation with the Bureau of the Census. The Research and Information Systems Division of the Department of Administration has been delegated the responsibility of coordinating the State Census Center Program in Montana and will serve as the State Census Center.

Objectives of the State Census Center and the State Census Center Program include the following:

- Expand orientation and technical assistance in data access and use for research, administration, planning, and decision making.

- Improve access to and extend use of Bureau of the Census statistical resources.

- Moderate the costs to data users, particularly in obtaining computerized data.

- Provide a structural feedback mechanism to identify needed improvement in census data products.

- Encourage the integration of census and other statistics to create an improved basis for decision making.

- Minimize unnecessary duplication by coordinating state statistical resources.

The State Census Center, through the State Library and the Summary Tape Processing Center, will accomplish its objectives by providing a variety of services including computer processing of census tapes, data analysis, technical assistance, and training. The Center will also prepare indicator and general analyses of demographic and economic characteristics of the state and substate areas.

Computer processing of census data will be available on a cost reimbursable basis to all users.

CLOSING

Questions concerning the State Census Center Program and requests for services are to be directed to the Research and Information Systems Division of the Department of Administration (telephone 440-2896 in Helena).

State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

July 15, 1981

Management Memo 4-81-10

TO: Executive Branch Agencies

FROM: Governor Ted Schwinden

RE: STAFFING PATTERNS

INTRODUCTION

It is the policy of this administration to limit personal services costs and the number of full-time equivalent (FTE) positions in Montana state government to the minimum necessary to insure effective delivery of services. Department heads are responsible for insuring that this policy is implemented and enforced.

This management memo supersedes Management Memo 4-80-8 dated August 1, 1980.

STAFFING PATTERN DETERMINATION

Determination of staffing patterns shall be at the discretion of department heads, subject to classification procedures provided by the Department of Administration, FTE position limitations established by the Governor and/or the Legislature, and budget authorizations. The Office of Budget and Program Planning may review, analyze, and make recommendations concerning agency staffing patterns.

To emphasize that agencies must operate within established budgets, all requests for staffing pattern changes must be accompanied by a written statement signed by the department head or his designated representative that indicates that approval of the requested action(s) will not cause the agency to exceed its appropriation or result in a deficiency or supplemental appropriation request to the Legislature.

CLOSING

Questions concerning the above are to be directed to the applicable budget analyst in the Office of Budget and Program Planning.

State of Montana
Office of the Governor
Helena, Montana 59620

TED SCHWINDEN
GOVERNOR

March 1, 1983

Management Memo 4-83-1

TO: All State Agencies

FROM: Governor Ted Schwinden

RE: RECOMMENDED PRIVATE CONSULTANT SELECTION PROCEDURES

INTRODUCTION

Contracting with individuals or organizations for various professional services is a recognized alternative for accomplishing some functions of State government. Department Directors or the person or persons charged by law with the ultimate responsibility for administering each State agency have the full authority and responsibility for determining the need for and securing the outside contractual help. These guidelines are intended to provide direction for the procedures to be carried out when selecting individuals or firms to provide private professional consultant services within the authority of each agency. For the purposes of these guidelines, the following definitions shall apply:

Professional Consultant Services - Services provided to a State agency by a private consultant under an independent contract.

Private Professional Consultant - Professional individual or firm providing professional consultant services to a State agency and compensated with assets of Montana State government.

In selecting a private professional consultant, it is expected that the State agency will base its choice on demonstrated competence, knowledge and qualifications and that contractual agreement will be dependent upon successful negotiation of a reasonable fee for the services. Further, if all other considerations are comparable, it is expected that preference will be given to a private consultant who is a bona fide resident of Montana and whose principal place of business is within the State.

BASIC SELECTION PROCEDURES

The following basic selection procedures shall be used as guidelines in an agency's selection of a private professional consultant:

1. Notification - Notice of a proposed contract should be given to all known qualified consultants who have indicated interest in performing the type of work to be contracted if the amount of the proposed contract will exceed $5,000. Notice should include, at minimum, preliminary project description, the procedures and selection criteria which the agency will use to select the finalists for the contract for services, a preliminary cost estimate, closing date for indication of interest and agency contact.

2. Initial Screening - When response to project notification is in excess of three qualified consultant firms or individuals, designated agency personnel shall apply predetermined preselection criteria to the qualifications, demonstrated competence, knowledge, specific expertise relative to the project and the previous work for the State of the applicants and shall determine no less than two consultant firms or individuals for further consideration. Applicants who are no longer under consideration should be notified by the agency.

3. Selection - Selection of the consultant individual or firm with whom contract negotiation will begin shall be determined on the basis of evaluation and rating of not less than two, nor more than three, qualified finalists. Predetermined criteria for selection shall include consideration of the applicants' capacity to perform the work in the time required, the expertise to be applied to the project tasks, estimated total number of hours, approach to performing project activities and other criteria considered by the agency to be pertinent to selection for the specific project. Proposed cost estimates associated with estimated hours will not be binding and shall not restrict the negotation of the consultatnt fee with the top-ranked consultant firm or individual selected.

4. Negotiation - Negotiation of consultant fee for the defined scope of services shall begin with the top-ranked consultant firm or individual selected. If agreement to a fee considered by the agency to be reasonable cannot be reached with the top-ranked firm or individual, negotiation shall terminate and be begun with the next-ranked consultant firm or individual. Negotiation shall end when a reasonable fee has been agreed to by the agency and the selected consultant firm or individual in order of ranking.

Professional personal service contract requirements are addressed in Management Memo 4-81-4 and will apply to contractual considerations.

WAIVER OF SELECTION PROCEDURES

An agency may waive all or some of the basic selection procedures only for predetermined reasons. Allowable waiver conditions are:

1. A bona fide emergency situation exists.
2. A documented sole source or proprietary product or process is required.

3. Conflicts with regulatory time frames or statutory deadlines do not allow compliance with the selection procedures.

Waiver criteria must be clearly specified and documented prior to selection activities.

ADMINISTRATIVE CONSIDERATIONS

Each agency contracting professional consultant services shall specify its operant selection procedures in writing, including specification of waiver conditions applicable to the work of the agency that is contracted.

MANAGEMENT MEMO 1:B/3

Smead MFG. CO. HASTINGS MN · LOS ANGELES · CHICAGO
LOGAN OH McGREGOR TX · LOCUST GROVE GA

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